



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

OFFICE OF THE CHAIR
Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, D.C. 20007

MAR 13 2006

RE: MUR 5587R
David Vitter for U.S. Senate and William
Vanderbrook, in his official capacity as treasurer
McRei, Inc.

Dear Ms. Mitchell:

On November 3, 2004, the Federal Election Commission notified David Vitter for U.S. Senate and William Vanderbrook, in his official capacity as treasurer ("the Committee"), and McRei, Inc., your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on March 7, 2006, found that there is reason to believe the Committee violated 2 U.S.C. § 441d, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. On the same date, the Commission found no reason to believe McRei, Inc. violated the Act and closed the file as to it.

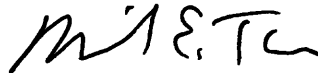
You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

27044174696

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Alexandra Doumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis

27044174697

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** David Vitter for U.S. Senate MUR 5587R
5 and William Vanderbrook,
6 in his official capacity as treasurer
7
8

9 **I. GENERATION OF THE MATTER**

10
11 This matter was generated by a complaint filed with the Federal Election
12 Commission by John A. Miller, Ph.D. See 2 U.S.C. 437(g)(a)(1).
13

14 **II. BACKGROUND**

15 The David Vitter for U.S. Senate committee ("the Committee") hired a polling
16 and voter identification company to conduct telephone polling on behalf of the
17 Committee. Two such polls are at issue in this matter. One poll consisted of advocacy
18 and voter identification calls. At the beginning of each call, the callers informed the
19 recipient that s/he was "working with the David Vitter for U.S. Senate Campaign." The
20 caller then explained, "I have decided to work to elect David Vitter because he has
21 worked hard to bring good jobs to Louisiana[,] . . . has a concrete record of fighting
22 political corruption [a]nd fully supports the Bush tax cuts;" asked the recipient of the call
23 if "David Vitter [can] count on your vote on election day;" and asked what issue the
24 recipient considered to be the most important issue facing our nation today. The caller
25 ended by stating, "Thank you for your time and we really do hope you will consider
26 David Vitter for U.S. Senate when you go to vote." The caller never stated that the
27 Committee paid for the calls.

28 A second group of calls are referred to as the "Undecided" poll calls. It appears
that the recipients of these second calls were individuals who indicated in the first set of

27044174698

1 calls that they had not decided for whom they intended to vote. In the "Undecided" poll
2 calls, the caller stated that they were from "PJB Media Research," a which name was a
3 d/b/a of the company hired to make the calls. The callers simply asked the recipient, "In
4 the U.S. Senate Race (sic) in November are you more likely to vote for:" and then listed
5 the names of the candidates, including David Vitter. The callers were instructed to rotate
6 the order they read the candidates' names when making the calls.

7 **III. FACTUAL AND LEGAL ANALYSIS**

8 The Act requires that political committees "making a disbursement for the
9 purpose of financing any communication . . . through any other type of general public
10 political advertising" must place a disclaimer in the communication. 2 U.S.C. § 441d.
11 Furthermore, the regulations state that any "public communication" for which a political
12 committee makes a disbursement must contain a disclaimer. 11 C.F.R. § 110.11.

13 A public communication includes a communication by telephone bank to the
14 general public. 11 C.F.R. § 100.26. A telephone bank means that more than 500 calls of
15 an identical or substantially similar nature were made within a 30-day period. 11 C.F.R.
16 § 100.28. The Explanation and Justification discussing the disclaimer regulations
17 implementing the 2002 Bipartisan Campaign Reform Act ("BCRA") amendments to the
18 Federal Election Campaign Act of 1971, as amended ("the Act"), also make clear that a
19 telephone bank is considered a type of general public political advertising. *See*
20 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) ("each form of communication specifically
21 listed in the definition of 'public communication,' as well as each form of communication
22 listed with reference to a 'communication' in 2 U.S.C. 441d(a), must be a form of
23 'general public political advertising.'"). Therefore, any candidate, political committee or

27044174699

1 their agent(s) making any disbursement for telephone bank calls must include a
2 disclaimer on the calls.

3 The disclaimer must be presented in a "clear and conspicuous manner" in order to
4 give the listener "adequate notice of the identity of the person or political committee that
5 paid for and, where required, that authorized the communication." 11 C.F.R.

6 § 110.11(c)(1). A disclaimer, if paid for and authorized by a candidate or an authorized
7 committee of a candidate, must clearly state that the communication has been paid for by
8 the authorized political committee. 11 C.F.R. § 110.11(b)(1).

9 Here, the number of calls made and the time period in which they were made are
10 not alleged. However, information leads us to believe more than 500 calls were made
11 within a 30-day period. An October 16, 2004 report titled, "Daily Campaign Figures,"
12 which is described as the "Undecided callback report" (and therefore presumably is a
13 compilation of the "Undecided" poll calls) indicates that 3,289 responses were compiled
14 by the polling company on that day, which implies that at least that number of calls were
15 made on that day.¹ Furthermore, according to the Committee's disclosure reports filed
16 with the Commission, the Committee made the following payments to the polling
17 company for "phone banks:" \$50,000 on September 7, 2004; \$110,000 on October 18,
18 2004; \$130,000 on October 25, 2004; \$48,257.21 on November 15, 2004. The fact that
19 the payments indicate a substantial portion of polling for the Committee was paid within
20 a limited time period (fourteen days), makes it likely that a large number of calls were
21 placed within a similarly limited time period. Finally, the Committee did not deny that

¹ The information is a bit unclear, because the document appends what appears to be the total numbers for the day. However, the "supporting documentation" also included in that exhibit indicates 272 true "undecideds" and 436 "Vitter persuadeds." Regardless, even that total would demonstrate that more than 500 calls were made on one day.

27044174700

1 500 calls were made or that the calls were made over a 30-day period. Based on all of
2 that information, it seems likely more than 500 calls on behalf of the Committee within a
3 30-day period.

4 BCRA, the regulations promulgated in accordance with the new BCRA
5 disclaimer provision, and the Explanation and Justification of those regulations make
6 clear that disclaimers are required on any phone bank communications for which a
7 political committee makes a disbursement. The Committee acknowledges that it paid for
8 both sets of calls. In the first set of calls, the caller simply stated s/he was "working
9 with" the Committee, but did not state that the Committee paid for the calls. As such,
10 those calls did not comply with the disclaimer provisions of the regulations and the Act.
11 The second set of calls did not contain any disclaimer at all. Accordingly, those calls also
12 violated the disclaimer provisions of the regulations and the Act.

13 Therefore, based on the foregoing, there is reason to believe that the Committee
14 and William Vanderbrook, in his official capacity as treasurer, violated 2 U.S.C. § 441d.

27044174701